APPENDIX A

United States Court of Appeals for the District of Columbia Circuit

No. 15063

[illegible] Administrator of Veterans Affairs, et al., *Appellants*

v.

[illegible] On Behalf of Himself and all Others Similarly Situated, *Appellee*

No. 15067

United States of America, *Appellant*

v.

[illegible] On Behalf of Himself and all Others Similarly Situated, *Appellee*

No. 15068

United States of America, *Appellant*

v.

[illegible] et al., Suing for Themselves and all Persons Similarly Situated, *Appellees*

Appeals from the United States District Court for the District of Columbia

Decided June 25, 1960

[illegible] Assistant Attorney General, Department of Justice, with whom Assistant Attorney General [illegible], Mr. [illegible], United States Attorney, and [illegible]

lander, Attorney, Department of Justice, were on the brief, for appellants.

Mr. John Geyer Tausig, with whom *Messrs. Henry F. Butler* and *John T. Koehler* were on the brief, for appellees.

Before MR. JUSTICE BURTON, retired,* and WASHINGTON and DANAHER, *Circuit Judges*.

MR. JUSTICE BURTON: Under Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, the United States guaranteed the payment of premiums on limited amounts of commercial life insurance policies carried by servicemen.[1] In 1942 the Act was amended to include, for the first time, an express provision that when such an insurance premium payment was made by the United States, it evidenced a debt due to the United States from the insured serviceman on whose account the payment was made. The amendments also provided that such debts to the United States were collectible either by their deduction from amounts due the insured servicemen from the United States or as otherwise authorized by law.[2]

The Administrator of Veterans' Affairs interpreted Article IV of the 1940 Act, prior to the 1942 Amendments, as establishing by implication a comparable obligation on the part of the insured servicemen to reimburse the Government for its payment of the guaranteed premiums. Under this interpretation, the Administrator collected over $1,640,000 from approximately 8,400 insured servicemen. He did this in large part by offsetting against the debts of the respective servicemen the dividends due

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* Sitting by designation pursuant to 28 U.S.C. § 294 (a).

[1] 54 Stat. 1183-1186, 50 U.S.C. App. (1940 ed.) §§ 540-554.

[2] 56 Stat. 775, 50 U.S.C. App. § 546.

them in connection with their National Service Life Insurance policies.[3]

Although there was some acquiescence in the Administrator's interpretation of the 1940 Act, there also was vigorous opposition to it. This resulted in conflicting judicial decisions[4] culminating in 1957 in the Supreme Court's decision, with three Justices dissenting, in *United States* v. *Plesha*, 352 U.S. 202. In that case the Supreme Court held that, contrary to the Administrator's interpretation of the 1940 Act, prior to the 1942 Amendments, the insured servicemen were not obligated to reimburse the Government for its payment of premiums on their account.

After the *Plesha* decision, the next problem was that of returning to the servicemen their funds which had been used erroneously by the Government to reimburse itself for its payment of the guaranteed premiums.

[3] Collected by offset against National Service Life Insurance dividends ..... $ 960,000
Insurance dividends 65,000
By offset against disability compensation 22,000
Cash payments in response to demands by letters ... 600,000
As a result of final judgments 2,000

$1,649,000

[4] Veteran required to reimburse the United States for its payment of guaranteed premiums. *United States* v. *Hyndler*, 225 F. 2d 106 (C.A. 10th Cir. 1955); *Morton* v. *United States*, 113 F. Supp. 496 (D.C. N.D. N.Y. 1953); *United States* v. *Nichols*, 105 F. Supp. 543 (D.C. N.D. Iowa 1952). Veteran not required to reimburse the United States for such payments. *Plesha* v. *United States*, 227 F. 2d 624 (C.A. 9th Cir. 1955), reversing 123 F. Supp. 593 (D.C. N.D. Calif. 1953); *Hormel* v. *United States*, 123 F. Supp. 806 (D.C. S.D. N.Y. 1954).

To facilitate such refunding, Congress, in 1958, enacted Public Law 85-586.[5] That Act authorized the Administrator of Veterans' Affairs, upon timely application, to refund to the servicemen, without interest, all amounts collected from them by the United States under its erroneous interpretation of the 1940 Act. Public Law 85-586 made available the money to make such refunds and also provided that the right to such refunds was not to be denied by reasons of statutory time limitations, judgments theretofore rendered, or "any other technical defense."

In the three cases now before us plaintiffs ask not only for the principal of the sums claimed, but also for interest on delayed dividends due them under their National Service Life Insurance policies. Furthermore, they ask for the allowance of attorneys' fees to cover services rendered not only to the named parties to the litigation, but to all persons similarly situated.

In No. 15066, the plaintiff, Emmet, sought a writ of mandamus from the District Court for the District of

[5] "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Administrator of Veterans' Affairs is hereby authorized to make refunds, without interest, which are due on account of amounts collected by the United States Government by offset or otherwise from persons who made valid application for and were legally entitled to the protection of article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, as it existed prior to the amendments of October 6, 1942. No refund shall be made pursuant to this Act unless application therefor is made to the Veterans' Administration, within two years after the date of enactment of this Act and refund hereunder shall not be denied by reason of any other statutory time limitations, judgments heretofore rendered, or any other technical defense.

"SEC. 2. The Soldiers' and Sailors' Civil Relief Fund may be used by the Veterans' Administration for making refunds pursuant to this Act and there is hereby authorized to be appropriated such additional sums as may be necessary to carry out the purposes of this Act." Public Law 85-586, 72 Stat. 487-488.

Columbia ordering the defendant officials to make the payments requested.

In Nos. 15067 and 15068 the plaintiffs, Deering and Mabbett, brought suit, respectively, in the District Court for the Southern District of New York and the District Court for the Northern District of California for the payment of their claims pursuant to the Tucker Act,[6] and the National Service Life Insurance Act.[7] Those courts transferred the cases to the District Court for the District of Columbia in reliance upon 28 U.S.C. § 1404 (a).[8]

That court consolidated the cases and granted a preliminary injunction, which is still in effect, forbidding the disbursement of more than 90% of the respective payments authorized by Public Law 85-586. It overruled all objections to its jurisdiction and to the propriety of taking action on the merits of the issues presented. After a plenary hearing it ordered payment by the Government not only of the amounts provided for in Public Law 85-586, but also of interest at 3% per annum on an amount equal to the value of the National Service Life Insurance dividends.[9] It also authorized the payment of attorneys' fees of 5% on the aggregate amount of principal and interest to be refunded under Public Law 85-586.

The Government, on appeal, seeks a reversal of the judgment below on the ground that none of these actions

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[6] See 28 U.S.C. § 1346 (a) (2) and § 1402 (a).

[7] 38 U.S.C. § 784.

[8] "(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

[9] The interest was to be computed from the date that the dividends were withdrawn from the National Service Life Insurance Fund to the date on which they were paid to the servicemen entitled to them.

should have been heard by the District Court for the District of Columbia. On the merits, the Government contends that neither the allowance for interest nor that for attorneys' fees was justified. For the reasons hereafter stated, we agree with the Government.

In No. 15066, originating in 1955 in the District Court for the District of Columbia, Emmet sought to litigate the question later resolved by the Supreme Court in *United States* v. *Plesha, supra*. He asked for a writ of mandamus directed against the Administrator of Veterans' Affairs, the Secretary of the Treasury, the Treasurer of the United States and the Comptroller General. It is elemental, however, that this extraordinary remedy was not available for such purpose, inasmuch as the Tucker Act provided an adequate remedy at law to test the question.[10] The pecuniary liability of the United States may be determined only through such procedures as the United States has authorized. Moreover, a writ of mandamus will be issued only to compel the performance of a ministerial duty as distinguished from one calling for exercise of discretion.[11] In this case the amounts claimed had not yet been determined at the time the action was filed. While this case was pending, the decision in the *Plesha* case and the enactment of Public Law 85-586 settled the major legal issues. They did not, however, authorize an allowance for interest and another for attorneys' fees as sought by the plaintiff. The way to reach those issues is not by writ of mandamus. Accordingly, the complaint in the *Emmet* case must be dismissed on jurisdictional grounds insofar as it applies to mandamus.

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[10] *United States ex rel. Girard Trust Co.* v. *Helvering*, 301 U.S. 540, 543 (1937); 28 U.S.C. §§ 1346, 1491 et seq.; see *Plesha* v. *United States*, 227 F. 2d 624 (C.A. 9th Cir. 1955).

[11] See *Riverside* v. *Walker*, 11 How. 272 (1851). The Code vests extensive unreviewable discretion in the Administrator to determine matters of law and fact in this area. See 38 U.S.C. §§785, 211.

Deering and Mabbutt sought relief comparable to that sought in the *Emmet* case but by a different procedure. They filed their complaints in the District Courts of their respective districts of residence. Each alleged that jurisdiction existed in those courts both under the Tucker Act and the National Service Life Insurance Act. On motions of plaintiffs those courts transferred both cases to the District Court for the District of Columbia under authority of 28 U.S.C. § 1404 (a). The Government here contends that the complaints should have been dismissed or the cases re-transferred to permissible districts.

Section 1404 (a) limits transfers of such cases to those districts where the action might have been brought in the first instance.[12] Such limitation excludes venue in this district under the Tucker Act, because by § 1402 (a) venue under the Tucker Act is limited to the courts of the districts of the plaintiffs' residence or to the Court of Claims.

But plaintiffs also contend that venue lies in the District Court for the District of Columbia under the National Service Life Insurance Act of 1940.[13] Under the

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[12] See note 8, *supra*.

[13] § 784. Suits on insurance.

"(a) In the event of disagreement as to claim, including claim for refund of premiums, under contract of National Service Life Insurance, United States Government life insurance, or yearly renewable term insurance between the Veterans' Administration and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the United States District Court for the District of Columbia or in the district court of the United States in and for the district in which such person or any one of them resides, and jurisdiction is conferred upon such courts to hear and determine all such controversies. . . . The courts of appeals for the several circuits, including the District of Columbia, shall respectively exercise appellate juris-

jurisdictional provision of that Act, actions involving disagreements as to claims under National Service Life Insurance contracts may be brought either in the district of the plaintiff's residence or in the District Court for the District of Columbia.

That provision, however, does not apply to the instant cases because the complaints here seek to recover the collections erroneously made by the Government in reliance upon the Soldiers' and Sailors' Civil Relief Act of 1940, not the National Service Life Insurance Act. The cases before us do not involve any disagreement about dividends under the Insurance Act. The Government admits the plaintiffs' right to those dividends. It disbursed them from the Insurance Fund and credited plaintiffs' accounts by offsetting the erroneous claims of the Government under the Soldiers' and Sailors' Civil Relief Act.

Even if these differences be treated as disagreements as to dividends, it still would be necessary to show here that this disagreement was one for an "insurance benefit" within the meaning of 38 U.S.C. § 784(h).[14] *Candell v. United States*, 189 F. 2d 442 (C.A. 10th Cir. 1951), indicates that disputes over dividends do not so qualify. As was pointed out in *Candell*, insurance dividends are real-

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diction and, except as provided in section 1254 of title 28, the decrees of such courts of appeals shall be final.

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"(h) The term 'claim' as used in this section means any writing which uses words showing an intention to claim insurance benefits; and the term 'disagreement' means a denial of the claim, after consideration on its merits, by the Administrator or any employee or organizational unit of the Veterans' Administration heretofore or hereafter designated therefor by the Administrator." 38 U.S.C.

Before Title 38 was enacted into positive law in 1958, the provisions of this section were contained in 38 U.S.C. (1952 ed.) §§ 445, 817.

[14] See note 13, *supra*.

ized as a result of low mortality experience and economies in the operation of the insurance company. They are unrelated to the obligation to pay the particular policyholder for a loss insured against and are not the same sort of payment as an insurance benefit.

Furthermore, the "disagreement" which is a prerequisite to a suit under the Insurance Act must include the filing of a claim or protest and a denial. That is absent here. *United States* v. *Christensen*, 207 F. 2d 757 (C.A. 10th Cir. 1953).

After the court below had declined to dismiss these cases or to transfer them to other District Courts, it considered them on their merits and granted substantially the relief requested. On these appeals, the parties have argued the merits. Although we have concluded that the lower courts were in error in deciding that venue in *Deering* and *Mabbutt* lies in the District of Columbia, this does not preclude us from disposing of these cases on the merits. Section 1406 (b) of the Judicial Code provides that deficiencies in venue shall not impair a District Court's jurisdiction if objection to the deficiency is not timely and sufficient.[15] Venue is primarily designed to protect defendants from inconvenient forums and courts from inconvenient lawsuits. Once the case has been heard fully and fairly on the merits, the reasons for reversing the judgment on grounds of improper venue are substantially diminished in the absence of prejudice to a party who has preserved his standing to complain by timely

[15] "(b) Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue." 28 U.S.C. *Olberding* v. *Illinois Central R. Co.*, 346 U.S. 338, 340 (1953); *Bankers Life & Cas. Co.* v. *Holland*, 346 U.S. 379, 382 (1953); *Polizzi* v. *Cowles Magazines, Inc.*, 345 U.S. 663, 665, 672 (1953); *Neirbo Co.* v. *Bethlehem Corp.*, 308 U.S. 165, 167-168 (1939); *Commercial Insurance Co.* v. *Stout Co.*, 278 U.S. 177, 179 (1929).

objection.[16] This factor distinguishes the cases before us from those where the decision of the District Court on the venue question was brought before the Court of Appeals by petition for mandamus or interlocutory appeal before a hearing on the merits.[17]

[16] See 28 U.S.C. § 2111; Fed. Rules Civ. Proc., 61.

Cf. *Bankers Life & Cas. Co.* v. *Holland*, *supra*, at 382; *Paramount Pictures, Inc.* v. *Rodney*, 186 F. 2d 111 (C.A. 3d Cir. 1950); *Atlantic Coast Line R. Co.* v. *Davis*, 185 F. 2d 766, 768 (C.A. 5th Cir. 1950); *Ford Motor Co.* v. *Ruan*, 182 F. 2d 329, 330 (C.A. 3d Cir. 1950); *Magnetic Engineering & Mfg. Co.* v. *Dings Mfg. Co.*, 178 F. 2d 866, 869 (C.A. 2d Cir. 1950).

Before the adoption of the Federal Rules of Civil Procedure, a defendant was required to raise his venue point by special appearance and motion to quash before he pleaded to the merits or he would be deemed to have waived his defense. See *e.g.*, *Commercial Insurance Co.* v. *Consolidated Stone Co.*, *supra*. Venue questions, therefore, did not arise in the federal courts on appeal after an adjudication on the merits. Rule 12 (b) of the Federal Rules of Civil Procedure abolished the special appearance and permitted an attack on the venue of the court to be pleaded by motion or in the answer along with the other defenses going to the merits. While we have not found any reported federal decisions since the adoption of the federal rules considering a venue contention on appeal after trial on the merits and coming to the conclusion that the error was harmless, a number of state courts have reached this decision in analogous circumstances. See *e.g.*, *Straus Bros. Co.* v. *Fisher*, 200 Ind. 307, 163 N.E. 225 (1928); *City of Georgetown* v. *Cantrill*, 158 Ky. 378, 164 S.W. 929 (1914); *Hayes* v. *Oertel*, 195 So. 388 (La. Ct. of App. 1940); *Sanders* v. *Atlantic Coast Line R. Co.*, 114 S.C. 164, 103 S.E. 564 (1920); *Oldham* v. *Reder*, 44 S. Dak. 428, 184 N.W. 250 (1921); *Woodson Independent School Dist.* v. *State ex rel. Cox*, 130 S.W. 2d 1038 (Tex. Civ. App. 1939); *Ramirez* v. *Sanchez*, 97 S.W. 2d 1034 (Tex. Civ. App. 1936); *Peters* v. *Allen*, 296 S.W. 929 (Tex. Civ. App. 1927); *Floor* v. *Mitchell*, 89 Utah 203, 41 P. 2d 281 (1935); *Kulb* v. *Luce*, 239 Wis. 256, 1 N.W. 2d 176 (1941).

[17] See *e.g.*, *Continental Grain Co.* v. *Federal Barge Lines, Inc.*, 268 F. 2d 240 (C.A. 5th Cir. 1959); *cert. granted*, 361 U.S. 811; *Behimer* v. *Sullivan*, 261 F. 2d 467 (C.A. 7th Cir. 1958); *cert. granted*, 361 U.S. 809; *Blaski* v. *Hoffman*, 260 F. 2d 317 (C.A. 7th Cir. 1958); *cert. granted*, 359 U.S. 904; *In re Josephson*, 218 F.

We proceed to a disposition of the instant cases on their merits because the erroneous determination of the venue questions below does not constitute reversible error as to any of the parties. These cases were transferred to this district on motions of the plaintiffs and their view of the venue questions prevailed below. Having invoked the transfer provisions of §1404 (a) themselves, and having failed to take a cross-appeal from the judgment below in their favor on the merits, they have waived their right to complain of the improper venue. *Peoria & P. U. R. Co.* v. *United States*, 263 U.S. 528 (1924).

As for the Government, if it prevails on the merits, the erroneous determination of the venue amounts to harmless error. It would not make any significant difference from the Government's point of view whether the cases were tried in New York and California, or in the District of Columbia. In fact, the Government has had the advantage of having to try only one proceeding and take appeals in one circuit rather than to have had three trials and take appeals in three circuits. In this situation there is no basis for concluding that prejudice to the Government resulted from trial in an improper district. It would be an obviously questionable result if we should find for the Government on the merits, and yet order it to relitigate the cases in other forums merely because improper venue had been imposed upon it over its timely objections.

On the merits, the court below ordered the defendants to pay plaintiffs, intervenors, and each veteran similarly situated, the amount the Administrator of Veterans' Af-

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20,174 (C.A. 1st Cir. 1954); *All States Freight, Inc.* v. *Modarelli*, 196 F. 2d 1010 (C.A. 3d Cir. 1952); *C-O-Two Fire Equipment Co.* v. *Barnes*, 194 F. 2d 410 (C.A. 7th Cir. 1952), *aff'd by an equally divided court*, 344 U.S. 861; *Gulf Research & Development Co.* v. *Leahy*, 193 F. 2d 302 (C.A. 3d Cir. 1951), *aff'd by an equally divided court*, 344 U.S. 861; *Paramount Pictures, Inc.* v. *Rodney*, *supra*; *Atlantic Coast Line R. Co.* v. *Davis*, *supra*; *Ford Motor Co.* v. *Ryan*, *supra*; *Magnetic Engineering & Mfg. Co.* v. *Dings Mfg. Co.*, *supra*.

fairs had wrongfully applied to the reimbursement of the United States for premiums advanced by it on the serviceman's commercial life insurance under the Civil Relief Act of 1940. The court below also ordered the payment of interest at 3% per annum on the amount so to be paid. An obvious reason for denying this allowance of interest is that Congress has made no provision for its payment. It is elemental that pre-judgment interest cannot be assessed against the Government in the absence of a specific provision authorizing such assessment.[18] Furthermore, since all but the few named parties to these actions will receive payment of their claims solely under Public Law 85-586, rather than under the judgments rendered in these cases, the terms of such payments are to be determined by such statute. It expressly states that the payments authorized are "without interest."

There is no authority in the National Service Life Insurance Act for the allowance of interest claimed by the named plaintiffs in these actions. In fact, the Supreme Court has held that no interest was allowable under the World War I Insurance Act, which is substantially identical to the National Service Life Insurance Act, even in the extreme case of a wrongfully withheld death benefit.[19]

The court below also ordered the allowance of attorneys' fees of 5% of the aggregate principal and interest which the court ordered paid under Public Law 85-586. These fees were to be applied first to reimbursement for legal expenses in certain named cases and the balance was to be divided among counsel named in the order. This allowance was not dependent upon statutory authority but

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[18] 28 U.S.C. §§ 2411, 2516. See *United States* v. *N. Y. Rayon Importing Co.*, 329 U.S. 654 (1947); *United States* v. *Thayer-West Point Hotel Co.*, 329 U.S. 585 (1947).

[19] *United States* v. *Citizens Loan & Trust Co.*, 316 U.S. 209 (1942); *United States* v. *Worley*, 281 U.S. 339 (1930).

rested upon the equity powers of a court to allow attorneys' fees in exceptional cases and for dominating reasons of justice. *Sprague* v. *Ticonic Bank*, 307 U.S. 161 (1939). The nature and extent of the legal services performed control the allowance rather than any formal relationship between client and attorney. The decision in the *Plesha* case authoritatively established the rights of the claimants and in that sense was a necessary precondition to the payment of any refunds to the veteran claimants. This decision, however, was merely an application of law which was available to other litigants under the doctrine of *stare decisis*. One who is influential in litigation leading to the announcement of a rule of law does not thereby gain a right to compensation from all those who later benefit from the application of the rule. Nor did the *Plesha* decision create such a distinct fund for the benefit of the class of claimants either by way of *stare decisis* or otherwise. It merely decided the claims of a few veterans out of about 8,400 who had claims involving a common question of law. Many of those claims would have been defeated by technical defenses, statutes of limitation, voluntary payments or *res judicata*, except for the waiver of such defenses by Congress as set forth in Public Law 85-586. In that Act, Congress made available the Civil Relief Fund and other funds for reimbursement of the veterans entitled to it.

From the small number of claimants who have joined these actions during the four years since the litigation was commenced, it is probable that few will join before judgment. Of the nine present intervenors, only two were not parties to one of the class suits or to *Plesha*. Few more, if any, are likely to join now in view of Public Law 85-586. The saying of so few, out of about 8,400 claimants, from the operation of the statute of limitations is not an adequate reason for imposing attorneys' fees upon all 8,400 litigants.

'Appellees' ultimate position is that they are entitled to attorneys' fees because Congress was moved by this litigation to pass an Act assisting these claimants. The class Congress favored is broader than that covered by the *Plesha* decision. The assertion of a noncontractual claim for compensation for services rendered in sponsoring favorable legislation does not deserve prolonged discussion.

The judgments of the District Court are reversed and the cases are remanded to it with directions that the complaint in No. 15066 be dismissed and that the complaints in Nos. 15067 and 15068 be dismissed unless the appellees move for a transfer to courts having jurisdiction over the actions for further proceedings not inconsistent with this opinion.

Reversed and remanded.

APPENDIX B

United States Court of Appeals for the District of Columbia Circuit

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September Term, 1959

Civil 5658-55

No. 15,066

SUMNER G. WHITTIER, Administrator of Veterans Affairs, et al., *Appellants*

v.

HERMAN L. R. EMMET, JR., On Behalf of Himself and all Others Similarly Situated, *Appellee*

September Term, 1959

Civil 1018-58

No. 15,067

UNITED STATES OF AMERICA, *Appellant*

v.

JAMES A. DEERING, On Behalf of Himself and all Others Similarly Situated, *Appellee*

September Term, 1959

Civil 1032-58

No. 15,068

UNITED STATES OF AMERICA, *Appellant*

v.

ROBERT H. MARBUTT, et al., Suing for Themselves and all Persons Similarly Situated, *Appellees*

Appeals from the United States District Court for the District of Columbia.

Before: Mr. Justice Burton, retired, and Washington and Danaher, *Circuit Judges*.

Judgment

These appeals came on to be heard on the record on appeals from the United States District Court for the District of Columbia, and were argued by counsel.

On Consideration Whereof, It is ordered and adjudged by this court that:

(1) in No. 15,066 the judgment of the District Court is reversed, and that case is remanded to the said District Court with directions to dismiss the complaint; and

(2) in Nos. 15,067 and 15,068 the judgments of the District Court are reversed and those cases are remanded to the District Court with directions to dismiss the complaints unless the appellees move for a transfer to courts having jurisdiction over the actions for further proceedings not inconsistent with the opinion of this court.

Per Curiam

Dated: June 23, 1960.

APPENDIX C

STATUTES, RULES AND REGULATIONS INVOLVED

1. The National Service Life Insurance Act, 72 Stat. 1148-1157, 38 U.S.C. 701-724, and related insurance provisions of Chapters 3, 19 and 53 of Title 38 U.S.C., particularly sections: 211 (formerly 2211), 702 (formerly 802 (e)), 707 (formerly 802 (f)), 749 (formerly 804), 75[illegible] (formerly 805), 784 (a) (formerly 445 and 817), 784 [illegible] (formerly 551), 784 (h) (formerly 445), 785 (formerly 8[illegible]

and 2211. (a)) and 3101 (b) (formerly 454 (a)) and 38 U.S.C. (1952 Ed.) 808, 54 Stat. 1012 and 60 Stat. 788.

§ 211. *Decisions by Administrator; opinions of Attorney General*

(a) Except as provided in sections 784, 1661, 1761, and as to matters arising under chapter 37 of this title, the decisions of the Administrator on any question of law or fact concerning a claim for benefits or payments under any law administered by the Veterans' Administration shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision.

(b) The Administrator may require the opinion of the Attorney General on any question of law arising in the administration of the Veterans' Administration. Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1115.

§ 702. *Premium rates and policy values*

Premium rates for insurance shall be the net rates based upon the American Experience Table of Mortality and interest at the rate of 3 per centum per annum. All cash, loan, paid-up, and extended values and all other calculations in connection with insurance shall be based upon said American Experience Table of Mortality and interest at the rate of 3 per centum per annum. Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1148.

§ 707. *Dividends to pay premiums*

Until and unless the Veterans' Administration has received from the insured a request in writing for payment in cash, any dividend accumulations and unpaid dividends shall be applied in payment of premiums becoming due on insurance subsequent to the date the dividend is payable after January 1, 1952. Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1149.

§ 719. *National Service Life Insurance appropriation*

(a) The National Service Life Insurance appropriation is continued and there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this chapter and the provisions heretofore prescribed in the National Service Life Insurance Act of 1940, or related Acts for the payment of liabilities under National Service Life Insurance. Payment from this appropriation shall be made upon and in accordance with awards by the Administrator.

§ 720. *National Service Life Insurance Fund*

(a) The National Service Life Insurance Fund heretofore created in the Treasury is continued as a permanent trust fund. Except as otherwise provided in this chapter, all premiums paid on account of National Service Life Insurance shall be deposited and covered into the Treasury to the credit of such fund, which, together with interest earned thereon, shall be available for the payment of liabilities under such insurance, including payment of dividends and refunds of unearned premiums. Payments from this fund shall be made upon and in accordance with awards by the Administrator.

(b) The Administrator is authorized to set aside out of such fund such reserve amounts as may be required under accepted actuarial principles to meet all liabilities under such insurance; and the Secretary of the Treasury is authorized to invest and reinvest such fund, or any part thereof, in interest-bearing obligations of the United States or in obligations guaranteed as to principal and interest by the United States, and to sell such obligations for the purposes of such fund. Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1154.

§ 784. *Suits on insurance*

(a) In the event of disagreement as to claim, including claim for refund of premiums, under contract of National Service Life Insurance, United States Government life insurance, or yearly renewable term insurance between the Veterans' Administration and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the United States District Court for the District of Columbia or in the district court of the United States in and for the district in which such person or any one of them resides, and jurisdiction is conferred upon such courts to hear and determine all such controversies. All persons having or claiming to have an interest in such insurance may be made parties to such suit, and such as are not inhabitants of or found within the district in which suit is brought may be brought in by order of the court to be served personally or by publication or in such other reasonable manner as the court may direct. In all cases where the Veterans' Administration acknowledges the indebtedness of the United States upon any such contract of insurance and there is a dispute as to the person or persons entitled to payment, a suit in the nature of a bill of interpleader may be brought at the request of the Veterans' Administration in the name of the United States against all persons having or claiming to have any interest in such insurance in the United States District Court for the District of Columbia or in the district court in and for the district in which any such claimant resides; however, no less than thirty days before instituting such suit the Veterans' Administration shall mail a notice of such intention to each of the persons to be made parties to the suit. The courts of appeals for the several circuits, including the District of Columbia, shall respectively exercise appellate jurisdiction and, except as provided in section 1254 of title 28, the decrees of such courts of appeals shall be final.

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(g) Whenever a judgment or decree shall be rendered in an action brought under the provisions of this section, the court, as a part of its judgment or decree, shall determine and allow reasonable fees for the attorneys of the successful party or parties and apportion same if proper, said fees not to exceed 10 per centum of the amount recovered and to be paid by the Veterans' Administration out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth of each of such payments until paid; except that, in a suit brought by or on behalf of an insured during his lifetime for waiver of premiums on account of total disability, the court, as part of its judgment or decree, shall determine and allow a reasonable fee to be paid by the insured to his attorney.

(h) The term "claim" as used in this section means any writing which uses words showing an intention to claim insurance benefits; and the term "disagreement" means a denial of the claim, after consideration on its merits, by the Administrator or any employee or organizational unit of the Veterans' Administration heretofore or hereafter designated therefor by the Administrator. Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1165.

§ 785. *Decisions by the administrator*

Except in the event of suit as provided in section 784 of this title, or other appropriate court proceedings, all decisions rendered by the Administrator under the provisions of this chapter shall be final and conclusive on all questions of law or fact, and no other official of the United States shall have jurisdiction to review any such decisions. Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1167.

§ 3101. *Nonassignability and exempt status of benefits*

* * * * * * * * * *

(b) This section shall prohibit the collection by setoff or otherwise out of any benefits payable pursuant to any law administered by the Veterans' Administration and re-

lating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (1) any person other than the indebted beneficiary or his estate; or (2) any beneficiary or his estate except amounts due the United States by such beneficiary or his estate by reason of overpayments or illegal payments made under such laws to such beneficiary or his estate or to his dependents as such. If the benefits referred to in the preceding sentence are insurance payable by reason of yearly renewable term insurance, United States Government life insurance, or National Service Life Insurance issued by the United States, the exemption provided in this section shall not apply to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness is in the form of liens to secure unpaid premiums or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits. Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1229.

§ 808. *General administrative provisions*

The Administrator, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this subchapter, shall have power to make such rules and regulations, not inconsistent with the provisions of this subchapter, as are necessary or appropriate to carry out its purposes, and shall decide all questions arising hereunder. All officers and employees of the Veterans' Administration shall perform such duties in connection with the administration of this subchapter as may be assigned to them by the Administrator. All official acts performed by such officers and employees designated therefor by the Administrator shall have the same force and effect as though performed by the Administrator. Except in the event of suit as provided in section 817 of this title, or other appropriate court proceedings, all decisions rendered by the Administrator under the provisions of this subchapter, or regulations properly issued pursuant thereto, shall be

final and conclusive on all questions of law or fact, and no other official of the United States, except a judge or judges of United States courts, shall have jurisdiction to review any such decisions. Oct. 8, 1940, 11 p. m., E.S.T., c. 757, Title VI, Part 1, § 608, 54 Stat. 1012; Aug. 1, 1946, c. 728, § 12, 60 Stat. 788.

2. Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 56 Stat. 775, 50 U.S.C. App. Article IV, (1952 ed.), particularly section 546.

§ 546. *Guaranty of premiums and interest by United States; settlement of amounts due upon expiration of protection; subrogation of United States; crediting debt repayments*

Payment of premiums and interest thereon at the rate specified in section 405 hereof [section 545 of this Appendix] becoming due on a policy while protected under the provisions of this article [sections 540-548 of this Appendix] is guaranteed by the United States, and if the amount so guaranteed is not paid to the insurer prior to the expiration of the period of insurance protection under this article [said sections], the amount then due shall be treated by the insurer as a policy loan on such policy, but if at the expiration of said period the cash surrender value is less than the amount then due, the policy shall then cease and terminate and the United States shall pay the insurer the difference between such amount and the cash surrender value. The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended [said sections], shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law. Any moneys received as repayment of debts incurred under this article, as originally enacted and as amended [said sections], shall be

credited to the appropriation for the payment of claims under this article [said sections]. Oct. 17, 1940, c. 888, § 406, 54 Stat. 1184; Oct. 6, 1942, c. 581, § 13, 56 Stat. 775; Apr. 3, 1948, c. 170, § 6, 42 Stat. 160.

3. Act of June 26, 1934, 48 Stat. 1233, c. 756, § 20, as amended, 31 U.S.C. 725s (c) (1) et seq.

§ 725s. *Same; trust funds*

(a) The funds appearing on the books of the Government and listed in subsections (b) and (c) of this section shall be classified on the books of the Treasury as trust funds. All moneys accruing to these funds are appropriated and shall be disbursed in compliance with the terms of the trust:

. . . . . .

(c) (1) United States Government life insurance fund, Veterans Administration (08875).

4. Act of September 2, 1958, 72 Stat. 1115, 38 U.S.C. 211 (formerly 2211). Text printed above as 38 U.S.C. 211.

5. Public Law 85-586, 72 Stat. 487, 50 App. U.S.C. 540 note.

§ 540. *Definitions* [Note]

. . . . . .

Veterans' Life Insurance Refunds: Pub. L. 85-586, Aug. 1, 1958, 72 Stat. 487, provided:

"That the Administrator of Veterans' Affairs is hereby authorized to make refunds, without interest, which are due on account of amounts collected by the United States Government by offset or otherwise from persons who made valid application for and were legally entitled to the protection of article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 [former sections 540-554 of this Appendix], as it existed prior to the amendments of October 6, 1942. No refund shall be made pursuant to this Act unless application therefor is made to the Veterans' Admin-

istration, within two years after the date of enactment of this Act [Aug. 1, 1958] and refund hereunder shall not be denied by reason of any other statutory time limitations, judgments heretofore rendered, or any other technical defense.

"Sec. 2. The Soldiers' and Sailors' Civil Relief Fund may be used by the Veterans' Administration for making refunds pursuant to this Act and there is hereby authorized to be appropriated such additional sums as may be necessary to carry out the purposes of this Act."

6. Public Law 36, 82nd Cong., 65 Stat. 43, 38 U.S.C. 707 (formerly 802 f). Text printed above as 380 U.S.C. 707.

7. Public Law 45, c. 121, 82nd Cong., 1st Sess., 65 Stat. "The following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply supplemental appropriations for the fiscal year ending June 31, 1951, and for other purposes, namely:

* * * *

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* * * *

"For an additional amount for 'compensation and pensions', $26,618,000, to remain available until expended."[1]

8. Public Law 759, c. 896, 81st Cong., 2nd Sess., 64 Stat. "The following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the support of the Government, for the fiscal year ending June 30, 1951, namely:

* * * *

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[1] The fiscal year 1951 is the year in which the withholding of the disability compensation from the veteran Emmet was commenced (J. A. 9, 20). There have been similar appropriations for each succeeding year.

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* * * *

"Compensation and pensions: For the payment of compensation, pensions * * * authorized under any act of Congress * * *, the administration of which is now * * * placed in the Veterans' Administration * * * $2,147,520,000, to be immediately available and to remain available until expended."

9. War Risk Insurance Act of Oct. 6, 1917, Article I, c. 105, Sec. 20, 40 Stat. 398, provides that "All premiums that may be collected for the insurance provided by the provisions of Article IV shall be deposited and covered into the Treasury to the credit of this [$23,000,000] appropriation."

10. World War Veterans Act, 1924, 43 Stat. 612, c. 320, Sec. 17.

"That all premiums paid on account of insurance converted under the provisions of Title III hereof shall be deposited and covered into the Treasury to the credit of the United States Government life insurance fund and shall be available for the payment of losses, dividends, refunds, and other benefits provided for under such insurance * * *.

"* * * and the Secretary of the Treasury is hereby authorized to invest and reinvest the said United States Government life insurance fund, or any part thereof, in interest bearing obligations of the United States or bonds of the Federal farm-loan banks * * *."

11. Veterans Administration Regulations 3426, 38 C.F.R. 8.26; 3426 A, 38 C.F.R. 8.26 a.

§ 8.26 Dividends. A National Service life insurance policy shall participate in and receive such dividends from gains and savings and (sic) may be determined by the Administrator of Veterans' Affairs. Any such dividends shall be paid in cash except that at the written request of the insured

they may be left to accumulate on deposit provided the policy is in force on a basis other than extended term insurance or level premium term insurance. Payment of dividends shall be without interest except when left to accumulate on deposit in accordance with the insured's written request. Interest on dividend accumulations will be credited annually at such rate as the Administrator may determine. Dividend accumulations and unpaid dividends shall not be available for the payment of insurance premiums except at the written request of the insured made before default in payment of a premium. Any unpaid dividend on a lapsed policy will be paid in cash to the insured, if living, otherwise to his estate. Dividend accumulations will be used in addition to the reserve on the policy for the purpose of computing the period of extended term insurance or the amount of paid-up insurance as provided in §§ 8.29(a) and 8.30, respectively. Upon maturity of the policy, any dividend accumulations not previously withdrawn and any unpaid dividends will be payable in cash under the policy.

Veterans Administration Regulations 3426 A, 38 C.F.R. 8.26 a.

§ 8.26a Special dividends. Any Special National Service life insurance dividend that may be declared shall be paid in cash only. Such special dividends shall not be accepted to accumulate on deposit. Unpaid special dividends shall not be available to pay premiums.

12. Federal Rules of Civil Procedure; Rule 23 (a) (2) and (3), Rule 52 (a).

Rule 23. Class Actions

(a) Representation. If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf

of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

(1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;

(2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or

(3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.

Rule 52. Findings by the Court

(a) Effect. In all actions tried upon the facts without a jury * * *, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; * * *. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.